IN THE UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

DONALD R. BULLOCK,

Appellant,

v.

ROBERT A. MCDONALD,
Secretary of Veterans Affairs,

Appellee.

ON APPEAL FROM THE BOARD OF VETERANS' APPEALS

BRIEF OF THE APPELLEE SECRETARY OF VETERANS AFFAIRS

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IN THE UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

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	)	
Appellant,	)	
	)	
v.	)	Vet.App. No. 15-4524
	)	
ROBERT A. MCDONALD,	)	
Secretary of Veterans Affairs	)	
	)	
Appellee.	)	

ON APPEAL FROM THE BOARD OF VETERANS' APPEALS

BRIEF OF THE APPELLEE SECRETARY OF VETERANS AFFAIRS

I. ISSUE PRESENTED

Whether the Board of Veterans' Appeals (BVA or Board), in its November 16, 2015, decision, properly denied entitlement to an initial rating in excess of 30 percent for posttraumatic stress disorder (PTSD) with alcohol abuse in remission.

II. STATEMENT OF CASE

A. Jurisdictional Statement

The Court has proper jurisdiction pursuant to 38 U.S.C. § 7252(a), which grants the United States Court of Appeals for Veterans Claims exclusive jurisdiction to review final decisions of the Board.

B. Nature of the Case

In this case, Appellant seeks an initial rating in excess of 30 percent for PTSD, which was denied in the Board decision now on appeal. [Record Before the Agency (R.) at 1-17]. Appellant argues the Board erred by not addressing private medical treatment records and opinion that found his PTSD symptoms caused major impairment. However, the Court should affirm the decision now on appeal because, contrary to Appellant's arguments, the Board had a plausible basis in the record for denying an increased initial rating in excess of 30 percent for PTSD.

C. Statement of Facts and Procedural History

Appellant had active duty in the U.S. Army between July 1988 and July 1992. [R. at 258].

In February 2010, Appellant filed a claim for service-connected benefits for PTSD. [R. at 516-21].

Also in February 2010, Appellant submitted a private psychiatric examination conducted by Dr. Hassan Jabbour. [R. at 95-97]. Appellant reported getting married approximately one year prior and indicated "things are okay so far" with his wife. [R. at 95 (95-97)]. He reported symptoms of flashbacks, nightmares, major insomnia, inability to focus or concentrate, anxiety, irritability, anger, and depression. [R. at 96 (95-97)]. He also reported he thought of suicide in the past but indicated his "suicidal ideation had decreased lately." *Id.* After a mental status examination, Dr. Jabbour found Appellant's

mood was anxious and depressed with some psychomotor retardation. *Id.* Dr. Jabbour found Appellant's thought processes were goal directed and logical; Appellant's speech was within normal limits; Appellant denied any hallucinations, suicidal ideation, and homicidal ideation; there was no evidence of psychosis or delusions; he was alert and oriented; and he had good insight and judgment. *Id.* Dr. Jabbour diagnosed chronic PTSD and assigned a Global Assessment of Functioning (GAF) score of 39. [R. at 97 (95-97)].

In May 2010, the Regional Office (RO) denied service connection for PTSD. [R. at 324-29].

Later that month, Appellant filed a Notice of Disagreement (NOD). [R. at 322-23].

In July 2011, Appellant underwent a Department of Veterans Affairs (VA) psychiatric examination. [R. at 605-10]. Appellant indicated he had a good relationship with his parents and a fair relationship with his wife, children, and stepchildren. [R. at 606 (605-10)]. Appellant stated he worked for a tire company following separation from service. [R. at 606 (605-10)]. The examiner noted Appellant drank heavily until 1999 when he quit. [R. at 607 (605-10)]. The examiner indicated "[t]here were no consequences of the abuse." *Id.* Appellant reported suspiciousness, hypervigilance, chronic sleep impairment, and depression. [R. at 605, 609 (605-10)]. Upon examination, the examiner found Appellant was oriented to person, place, time, and purpose; appearance and hygiene were appropriate; behavior was appropriate; depressed mood and

affect; normal communication, concentration, thought processes, judgment, and memory; and no panic attacks, delusions, hallucinations, obsessive-compulsive behavior, suicidal ideation, or homicidal ideation. [R. at 607 (605-10)]. The examiner diagnosed chronic PTSD with alcohol abuse in remission. *Id.* The examiner assigned a GAF score of 60. [R. at 608 (605-10)]. The examiner found "[Appellant's] psychiatric symptoms cause occupational and social impairment with occasional decrease in work efficiency and intermittent inability to perform occupational tasks as evidenced by depressed mood, chronic sleep impairment and suspiciousness." [R. at 609 (605-10)].

In September 2011, the RO granted service connection to PTSD and assigned an initial rating of 30 percent with an effective date of February 10, 2010, the date VA received Appellant's claim for benefits. [R. at 293-308].

That same month, Appellant filed an NOD. [R. at 289-92]. Appellant argued the RO mischaracterized the severity of his symptomatology as "mild" when the July 2011 VA examiner assigned a GAF score of 60, which Appellant argued indicated "moderate" PTSD symptoms. [R. at 289 (289-92)]. Appellant also argued the RO improperly disregarded the opinion of Dr. Jabbour, his treating physician, who found Appellant had "major impairment" due to his PTSD symptoms. [R. at 291 (289-92)].

In April 2013, the RO issued a Statement of the Case continuing the assigned 30 percent rating for PTSD. [R. at 264-82].

Later that month, Appellant perfected his appeal. [R. at 263].

In June 2014, Appellant underwent a second VA psychiatric examination. [R.at 539]; [R. at 548-56]. The examiner found Appellant's PTSD symptoms resulted in "[o]ccupational and social impairment with occasional decrease in work efficiency and intermittent periods of inability to perform occupational tasks, although generally function satisfactorily, with normal routine behavior, self-care and conversation." [R. at 550 (548-56)]. Appellant reported getting along well with his wife, children, and mother. [R. at 551-52 (548-56)]. He stated he had worked full time for the same tire company for the previous fourteen years. [R. at 552 (548-56)]. He indicated he was written up for a minor infraction three years prior but otherwise got along well with his coworkers and supervisors. *Id.* The examiner found Appellant's symptoms included depressed mood, anxiety, suspiciousness, and chronic sleep impairment. [R. at 554 (548-56)]. The examiner noted Appellant was alert, cooperative, able to work full time, and able to manage his finances. [R. at 555 (548-56)].

In July 2014, the RO issued a Supplemental Statement of the Case (SSOC) denying an increased rating in excess of 30 percent for PTSD. [R. at 221-224].

In March 2015, the Board remanded Appellant's claim to obtain private and VA treatment records. [R. at 209-12].

Appellant's private treatment records from Dr. Jabbour were obtained and associated with the claims file. [R. at 74-97]. Appellant consistently reported anxiety, insomnia, flashbacks, nightmares, anger, irritation, problems

concentrating, and disinterest in socializing. *E.g.*, [R. at 74 (74-75) (noting reports of anxiety, flashbacks, nightmares, insomnia, discomfort in crowds, and general mistrust in people)]; [R. at 78 (78-79) (noting reports of irritability about work, problems with socialization, anxiety, flashbacks, and nightmares)]; [R. at 80 (80-81) (noting reports of not having a social life, mistrust in people, staying away from crowds, problems communication at home, and anxiety)]; [R. at 82 (noting reports of being "stressed out tremendously" by work, irritability, and anger)]. He denied suicidal ideation, homicidal ideation, and hallucinations. *E.g.*, [R. at 78 (78-79) ("[Appellant] denied any auditory, visual and tactile hallucinations . . . denied any Suicidal or homicidal thought or any self injurious behavior")]; [R. at 80 (80-81) ("[Appellant] denied any auditory, visual and tactile hallucinations . . . denied any Suicidal or homicidal thought or any self injurious behavior")]; [R. at 84 ("He denied any auditory or visual hallucination. Denied any suicidal ideation or homicidal ideation.")]. Dr. Jabbour found Appellant was alert and oriented. *E.g.*, [R. at 96 (95-97) ("Cognitively, [Appellant] was alert and oriented.")]. Appellant reported panic attacks at September 2011 and June 2012 treatment sessions. [R. at 86]; [R. at 89]. Between February 2010 and April 2015, Dr. Jabbour assigned GAF scores between 39 and 45. [R. at 78 (78-79)]; [R. at 80 (80-81)]; [R. at 97 (95-97)]. Appellant indicated he gets along okay with his wife. [R. at 85].

Appellant's VA post-service treatment records were also obtained and associated with the claims file. [R. at 57-66]; [R. at 112-208]. Between

September 2011 and September 2015, VA examiners consistently assigned a GAF score of 55. [R. at 147 (146-48)]; [R. at 157 (157-58)]; [R. at 162 (161-63)]; [R. at 167 (166-67)]; [R. at 178 (175-79)]. Appellant consistently reported insomnia, nightmares, panic attacks two or three times a month, and seeing moving shadows several times a week. *E.g.*, [R. at 118 (noting continued difficulty sleeping)]; [R. at 121 (121-22) (noting continued symptoms of occasional hallucination, panic attacks about twice monthly, and nightmares)]; [R. at 125 (125-26) (noting reports of seeing shadows "once in a while," having nightmares once or twice a week, and having panic attacks two to three times a month)]; [R. at 129 (129-30) (noting reports of nightmares once or twice a week, panic attacks two or three times a month, and anxiety)]; [R. at 147 (146-48) ("Still sees shadows of things running across the room or outside 3-4 times a week.")]; [R. at 175, 177 (175-179) (noting reports of discomfort around people, panic attacks two to three times per week, and "seeing a 'blurr' [sic] out of the corners of his eyes")]. The examiners consistently found Appellant was alert; was oriented to place, person, and situation; and denied suicidal and homicidal ideation. *E.g.*, [R. at 60 (59-60) (finding Appellant "[a]lert, oriented to place, person, and situation . . . [d]enies suicidal and homicidal ideation" upon mental status examination)]; [R. at 114 (113-14)]. The treatment records indicated Appellant lived with his wife and stepchildren throughout this period. [R. at 59 (59-60)]; [R. at 137 (136-38)]; [R. at 151 (150-52)]; [R. at 168 (167-169)]; [R. at 176 (175-79)]; [R. at 182 (182-83)]. At a September 2, 2015 treatment visit,

Appellant reported feeling mad, anxious, and depressed due to marital problems; however, the examiner found Appellant was alert, had normal speech, denied hallucinations, and denied suicidal and homicidal ideation. [R. at 59-60]. At an August 15, 2013, treatment visit, Appellant indicated he had previously lost his temper and disagreed with a superior at work resulting in suspension from work. [R. at 147 (146-48)].

In September 2015, the RO issued an SSOC continuing to deny an increased rating in excess of 30 percent for PTSD. [R. at 42-53].

In November 2015, the Board issued the decision now on appeal. [R. at 1-17]. The Board found Appellant's PTSD symptomatology exhibited "occupation and social impairment with an occasional decrease in work efficiency and intermittent periods of inability to perform occupational tasks, consistent with the currently assigned 30 percent rating." [R. at 10 (1-17)]. The Board found Appellant reported symptoms of depressed mood, anxiety, sleep impairment, anger, irritability, flashbacks, nightmares, trouble socializing, hallucinations, and panic attacks. [R. at 10-12 (1-17)]. The Board noted Appellant was found to have no suicidal or homicidal ideation; to have good judgment and impulse control; and to be oriented to person, place, time, and purpose. [R. at 10 (1-17)]. The Board noted Appellant got along well with his coworkers and supervisors and maintained a positive relationship with his family until recent marital problems. *Id.* The Board noted Appellant worked for the same employer for more than a decade and found "one infraction at work in over 14 years is

indicative of a high level of competency and function to do the job, rather than evidence of occupational and social impairment with reduced reliability and productivity." [R. at 11 (1-17)]. The Board noted Appellant reported seeing things in his peripheral vision and having panic attacks. *Id.* The Board found "[Appellant's] hallucinations and panic attacks, do not alone, support an increase in [Appellant's] disability rating." *Id.* The Board noted Appellant was assigned GAF scores between 39 and 60 during the appeal period. [R. at 12 (1-17)]. The Board noted VA treating physicians assigned GAF scores between 55 and 60 while Appellant's private physician, Dr. Jabbour, assigned GAF scores between 39 and 45. *Id.* The Board found the lower GAF scores assigned by Dr. Jabbour had little probative value because the assigned scores were "inconsistent with the level of functionality described" and "inconsistent with the other evidence of record." [R. at 12-13 (1-17)]. The Board found referral for extraschedular consideration was not warranted because "[Appellant's] symptomatology is fully contemplated by the pertinent diagnostic criteria." [R. at 14 (1-17)]. The Board also noted Appellant is not in receipt of compensation for any other service-connected disabilities and did not consider whether the collective impact of multiple service-connected disabilities presented an exceptional or unusual disability picture. *Id.* The Board found a claim for a total disability rating based on individual unemployability was not raised because the record established Appellant is currently working and Appellant did not allege his PTSD prevented

him from securing or following substantially gainful employment. [R. at 15 (1-17)].

III. SUMMARY OF THE ARGUMENT

In this case, the Board denied entitlement to an increased initial rating in excess of 30 percent for PTSD with alcohol abuse in remission. The Court should affirm the decision now on appeal because, contrary to Appellant's arguments, the Board had a plausible basis in the record for denying entitlement to an increased initial rating in excess of 30 percent for PTSD with alcohol abuse in remission.

IV. ARGUMENT

The Court should affirm the decision now on appeal because the Board had a plausible basis in the record for denying an increased initial rating in excess of 30 percent for PTSD.

Disability ratings are determined based on the criteria set forth in VA's Schedule for Rating Disabilities. 38 U.S.C. § 1155 (2016); 38 C.F.R. § 4.1 (2016). "Where there is a question as to which of two evaluations shall be applied, the higher evaluation will be assigned if the disability picture more nearly approximates the criteria required for that rating." 38 C.F.R. § 4.7 (2016). "[If] a reasonable doubt arises regarding the degree of disability such doubt will be resolved in favor of the claimant." 38 C.F.R. § 4.3 (2016). For an increased rating claim, "the most recent, or 'current', medical findings are to be given precedence over past examinations." *Bowling v. Principi*, 15 Vet.App. 1, 10 (2001); *accord Francisco v. Brown*, 7 Vet.App. 55, 58 (1994) ("Where entitlement

to compensation has already been established and an increase in the disability rating is at issue, the present level of disability is of primary concern."). The Board's assignment of a disability rating is a finding of fact reviewed under the "clearly erroneous" standard of review. *Thun v. Peake*, 22 Vet.App. 111, 115 (2008).

PTSD is rated under the general rating formula for mental disorders. 38 C.F.R. § 4.130 (2016). A 30 percent rating for PTSD is warranted for:

> Occupational and social impairment with occasional decrease in work efficiency and intermittent periods of inability to perform occupational tasks (although generally functioning satisfactorily, with routine behavior, self-care, and conversation normal), due to such symptoms as: depressed mood, anxiety, suspiciousness, panic attacks (weekly or less often), chronic sleep impairment, mild memory loss (such as forgetting names, directions, recent events).

Id. A 50 percent rating for PTSD is warranted for:

> Occupational and social impairment with reduced reliability and productivity due to such symptoms as: flattened affect; circumstantial, circumlocutory, or stereotyped speech; panic attacks more than once a week; difficulty in understanding complex commands; impairment of short- and long-term memory (e.g., retention of only highly learned material, forgetting to complete tasks); impaired judgment; impaired abstract thinking; disturbances of motivation and mood; difficulty in establishing and maintaining effective work and social relationships.

Id.

The Board properly found an increased initial rating in excess of 30 percent was not warranted for Appellant's service-connected PTSD. The Board found Appellant reported symptoms of depressed mood, anxiety, sleep impairment, anger, irritability, flashbacks, nightmares, trouble socializing,

hallucinations, and panic attacks. [R. at 10-12 (1-17)]; *see* [R. at 57-66]; [R. at 74-97]; [R. at 112-208]; [R. at 548-56]; [R. at 605-10]. The Board noted Appellant was found to have no suicidal or homicidal ideation; good judgment and impulse control; and oriented to person, place, time, and purpose. [R. at 10 (1-17)]; *see* [R. at 57-66]; [R. at 74-97]; [R. at 112-208]; [R. at 548-56]; [R. at 605-10].

In addressing Appellant's PTSD symptomatology's impact on social functioning, the Board noted Appellant reported having trouble socializing but also reported getting along well with coworkers and family. [R. at 10 (1-17)]; *e.g.*, [R. at 86 (indicating "[Appellant] has no social life")]; [R. at 551-52 (548-56) (noting Appellant "[g]ets along well with wife and kids" and "gets along well with co workers [sic] and supervisors")]; [R. at 606 (605-10) (noting Appellant has a good relationship with parents and fair relationship with wife and stepchildren)]. The Board noted Appellant has lived with his wife and step children throughout the appeal period. [R. at 10 (1-17)]; *see* [R. at 59 (59-60)]; [R. at 85]; [R. at 137 (136-38)]; [R. at 151 (150-52)]; [R. at 168 (167-69)]; [R. at 176 (175-79)]; [R. at 182 (182-83)]; [R. at 551-52 (548-56)]. A September 2, 2015, VA treatment record indicated Appellant was angry with his wife for having an extramarital affair; however, upon examination, Appellant was found to be alert; was oriented to place, person, and situation; denied hallucinations; denied suicidal and homicidal ideation; and exhibited good impulse control and judgment. [R. at 59-60]. The Board noted Appellant's marital problems may demonstrate Appellant having difficulty maintaining a relationship with his wife; however, the evidence

did not demonstrate Appellant's ability to function had "deteriorated to the point where he exhibits occupational and social impairment with reduced reliability and productivity." [R. at 11 (1-17)].

In addressing Appellant's PTSD symptomatology's impact on occupational functioning, the Board noted Appellant had worked for the same tire company for more than fourteen years and reported getting along well with his coworkers and supervisors. [R. at 11 (1-17)]; [R. at 552 (548-56)]. The Board noted Appellant reported a single, minor incident with a supervisor that resulted in a reprimand. [R. at 147 (146-48)]; [R. at 552 (548-56)]. The Board found "one infraction at work in over 14 years is indicative of a high level of competency and function to do the job, rather than evidence of occupational and social impairment with reduced reliability and productivity." [R. at 11 (1-7)].

The Board noted Appellant reported seeing things in his peripheral vision and having panic attacks as frequently as two to three times a week. [R. at 11 (1-17)]; [R. at 76 (76-77)]; [R. at 78 (78-79)]; [R. at 80 (80-81)]; [R. at 147 (146-48)]; [R. at 157 (157-158)]; [R. at 161-62 (161-63)]; [R. at 166 (166-67)]; [R. at 177 (175-79)]. Despite suggesting the applicability of a higher disability rating, the Board found Appellant's hallucinations and panic attacks did not result in social and occupational impairment beyond what is contemplated by a 30 percent rating for PTSD. [R. at 11 (1-17)]; *Vazquez-Claudio v. Shinseki*, 713 F.3d 112, 117-18 (Fed. Cir. 2013) ("§ 4.130 requires not only the presence of certain symptoms by also that those symptoms have caused occupational and

asocial impairment in most of the referenced areas"). The Board also noted Appellant specifically denied having hallucinations or panic attacks more than once a week several times during the appeal period. [R. at 59-60]; [R. at 74 (74-75)]; [R. at 76 (76-77)]; [R. at 78 (78-79)]; [R. at 80 (80-81)]; [R. at 82]; [R. at 96 (95-97)]; [R. at 121 (121-22)]; [R. at 125 (125-26)]; [R. at 129 (129-30)]; [R. at 142 (141-43)]; [R. at 157 (157-158)]; [R. at 161 (161-63)]; [R. at 166 (166-67)]; [R. at 175 (175-79)]; [R. at 607 (605-10)]. Despite these symptoms, Appellant lived with his wife and stepchildren throughout the appeal period and mostly indicated he got along well with his family. [R. at 11-12 (1-17)]; *see* [R. at 59 (59-60)]; [R. at 85]; [R. at 137 (136-38)]; [R. at 151 (150-52)]; [R. at 168 (167-69)]; [R. at 176 (175-79)]; [R. at 182 (182-83)]; [R. at 551-52 (548-56)]. Appellant also had a full-time occupation with the same company for more than fourteen years, with only one incident during those years, and reported getting along well with his coworkers and supervisors. [R. at 552 (548-56)]; *see* [R. at 74 (74-75)]; [R. at 76 (76-77)]; [R. at 82]; [R. at 83]; [R. at 84]; [R. at 85]; [R. at 86]; [R. at 88]; [R. at 89]; [R. at 92]; [R. at 96 (95-97)]; [R. at 606 (605-10)].

Based on Appellant's PTSD symptomatology and its effect on social and occupational functioning, the Board found Appellant was not entitled to a disability rating in excess of 30 percent. The Board noted both the July 2011 and June 2014 VA examiners found Appellant's symptomatology caused "occupational and social impairment with occasional decrease in work efficiency and intermittent inability to perform occupation tasks," which is consistent with a

30 percent rating for PTSD. [R. at 550 (548-56)]; [R. at 609 (605-10)]; 38 C.F.R. § 4.130. The Board noted, during the appeal period, VA examiners assigned GAF scores between 55 and 60 and Dr. Jabbour assigned GAF scores between 39 and 45. *e.g.*, [R. at 78 (78-79)]; [R. at 97 (95-97)]; [R. at 147 (146-48)]; [R. at 608 (605-10)]. For the reasons articulated below, the Board found the GAF scores assigned by the VA examiners, indicating moderate symptoms, had more probative value than the lower scores assigned by Dr. Jabbour. [R. at 12-13 (1-17)]; *Diagnostic and Statistical Manual of Mental Disorders* 32 (4th ed.1994). The Board concluded, based on the impact of Appellant's symptomatology on social and occupational functioning detailed above, "[Appellant's] symptomatology does not endorse the severity and types of symptoms as outlined in the 50 percent criteria or higher" for PTSD. [R. at 13 (1-17)]; *see* 38 C.F.R. § 4.130. The Board had a plausible basis in the record for denying entitlement to an increased initial rating in excess of 30 percent for Appellant's service-connected PTSD.

The Board properly found referral for extraschedular consideration was not warranted because Appellant's PTSD symptomatology did not result in an exceptional or unusual disability picture. [R. at 14 (1-7)]; *Thun v. Peake*, 22 Vet.App. 111, 115-16 (2008) *aff'd sub nom. Thun v. Shinseki*, 572 F.3d 1366 (Fed. Cir. 2009). The Board found "[Appellant's] symptomatology is fully contemplated by the pertinent diagnostic criteria." [R. at 14 (1-17)]; *Thun*, 22 Vet.App. at 115 ("The threshold factor for extraschedular consideration is a

finding that the evidence before VA presents such an exceptional disability picture that the available schedular evaluations for that service-connected disability are inadequate"). The Board also noted it was to consider factors not specifically listed in the general rating formula for mental disorders when determining the proper disability rating. [R. at 14 (1-17)]; *Mauerhan v. Principi*, 16 Vet.App. 436, 442 (2002). The Board concluded "[t]here is nothing in the record to suggest that [Appellant's] disability picture is so exceptional or usual as to render impractical the applicability of the regular schedular standards." [R. at 14 (1-17)]. Because it found Appellant's disability picture did not meet the first element under *Thun*, the Board was not required to address the second element under *Thun*. *Id.*; *Yancy v. McDonald*, 27 Vet.App. 484, 494-95 (2016). Appellant does not contest the Board's finding referral for extraschedular consideration was not warranted. *See* App.Br. The Board properly found referral for extraschedular consideration was not warranted in this case.

The Board properly found the issue of entitlement to TDIU was not raised by the record. [R. at 15 (1-17)]; *see Rice v. Shinseki*, 22 Vet.App. 447, 453-54 (2009) (holding a claim for entitlement to TDIU is not a separate claim but part of an original claim for service connection or a claim for an increased rating). The Board found "the record does not reflect that [Appellant's] service-connected PTSD with alcohol abuse in remission renders him unable to secure or follow a substantially gainful occupation, and [Appellant] has not alleged as much." [R. at 15 (1-17)]. Specifically, the Board noted Appellant was currently working for a

tire company. *Id.*; *e.g.*, [R. at 552 (548-56)] (2014 report indicating Appellant had been working at the same job for 14 years). Appellant does not contest the Board's finding the issue of entitlement to TDIU was not raised by either himself or the record. *See* App.Br. The Board properly found the issue of entitlement to TDIU was not raised by the record or Appellant.

Appellant argues the Board erred by disregarding the medical opinion and treatment records from his treating physician, Dr. Jabbour, which assigned GAF scores between 39 and 45. App.Br. at 2, 4-5. The Board is permitted to favor one medical opinion over another and opinions of treating physicians are not given greater weight in evaluating claims for VA benefits. *Nieves-Rodriguez v. Peake*, 22 Vet.App. 295, 300-01 (2008); *D'Aries v. Peake*, 22 Vet.App. 97, 107 (2008). Furthermore, contrary to Appellant's argument, a Veteran's assigned GAF score is only one of several factors upon which the Board relies to determine the proper disability rating and does not necessitate assignment of a particular disability rating. App.Br. at 4; *Bowling v. Principi*, 15 Vet.App. 1, 13-14 (2001). As such, the Board permissibly assigned greater probative value to the VA examinations and treatment records. The Board noted VA examiners assigned GAF scores between 55 and 60 during the appeal period, while Dr. Jabbour assigned GAF scores between 39 and 45. [R. at 12 (1-17)]; [R. at 78 (78-79)]; [R. at 80 (80-81)]; [R. at 97 (95-97)]; [R. at 147 (146-48)]; [R. at 157 (157-58)]; [R. at 162 (161-63)]; [R. at 167 (166-67)]; [R. at 178 (175-79)]. The Board found the lower GAF scores assigned by Dr. Jabbour had less probative

value because "the low GAF scores appear to be inconsistent with the level of functionality described" in the treatment records. [R. at 12 (1-17)]. The Board cited the example of the March 6, 2014, private treatment record in which Appellant denied having suicidal or homicidal ideation, denied having hallucinations, and reported working for the same tire company since 2000; however, Dr. Jabbour assigned a GAF score of 45, indicative of serious impairment in social and occupational functioning. [R. at 80 (80-81)]; *Diagnostic and Statistical Manual of Mental Disorders* 32 (4th ed.1994). The Board also found the lower GAF scores were inconsistent with other evidence of record indicating Appellant did not "exhibit major impairment in work; family relations; judgment, thinking, or mood, nor was there any indication of serious symptoms or serious impairment in social or occupational function." [R. at 13 (1-17)]; *e.g.*, [R. at 60 (59-60) (finding "good impulse control and judgment at this time")]; [R. at 551-52 (548-56) (noting Appellant's reports of getting along well with wife, children, and parents and working for the same tire company for the previous fourteen years)]. The Board properly assigned less probative value to the opinion and assigned GAF scores of Dr. Jabbour and provided sufficient reasons for its determination. *Nieves-Rodriguez*, 22 Vet.App. at 300-01; *D'Aries*, 22 Vet.App. at 107. However, as outlined above, the Board still considered and analyzed the symptomatology noted by Dr. Jabbour and the VA examiners to determine the proper disability rating for Appellant's service-connected PTSD. [R. at 10-13 (1-17)]. The Court should affirm the decision now on appeal

because the Board had a plausible basis in the record for denying an increased initial rating in excess of 30 percent for PTSD with alcohol abuse in remission and Appellant's arguments are without merit and fail to demonstrate error in the Board decision.

V. CONCLUSION

Wherefore, for the foregoing reasons, Appellee, Robert A. McDonald, Secretary of Veterans Affairs, respectfully urges the Court affirm the Board's November 16, 2015, decision, denying entitlement to an increased initial rating in excess of 30 percent for PTSD with alcohol abuse in remission.

Respectfully submitted,

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CERTIFICATE OF SERVICE

On the 10th day of August 2016, a copy of the foregoing was mailed, postage prepaid, to:

Donald R. Bullock
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I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

/s/ Alexander W. You
ALEXANDER W. YOU
Appellate Attorney